

On November 15, 2002, claimant slipped and fell while pushing a dumpster filled with trash down a ramp. Her tailbone landed on her foot. A co-worker was in front of the dumpster and did not see claimant fall. The incident occurred near the end of claimant's work shift on Friday.

As claimant was leaving the building a security guard asked why she was limping. Claimant replied that she had slipped and landed on her tailbone while emptying trash behind the building.

On Monday claimant was experiencing pain and called respondent to inquire if she qualified for health insurance, but after she explained she had fallen at work she was referred to St. Francis Hospital. The medical records contain a history that claimant slipped and fell while taking out trash. Claimant was diagnosed with a distal sacrum fracture.

The following day respondent gave a statement about the incident which noted claimant and her co-worker had joked about the incident immediately after it happened. The co-worker did not recall the incident nor joking about it. But he did recall claimant complaining of hip pain when they returned to the building.

The respondent argues claimant must be lying about the incident because her co-worker denied joking with claimant about her fall and because she could not accurately describe whether in the fall her tailbone hit the heel or ankle of her foot. The Board disagrees.

The fact that there were minor inconsistencies between claimant's testimony and the written statement prepared for her signature does not significantly undermine her credibility. It is apparent from the transcript of the hearing that there was some difficulty in communicating with both claimant and her co-worker, Mr. Jose Bermudez.

The Board finds the ALJ, in granting claimant medical treatment, had to conclude that claimant's testimony was truthful. The ALJ had the opportunity to evaluate both claimant and her co-worker's testimony because both testified in person at the preliminary hearing. In circumstances such as this, where there may be conflicting evidence, the Board finds it is appropriate to give some deference to the ALJ's conclusions.

The claimant's testimony that she slipped and fell at work injuring her tailbone is corroborated by the security guard's affidavit, the hospital records and her co-worker's admission she was complaining of hip pain when they returned to the building from dumping the trash. The Board finds claimant met her burden of proof to establish she suffered accidental injury arising out of and in the course of her employment. The ALJ's Order is affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated January 23, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March 2003.

BOARD MEMBER

c: George H. Pearson, Attorney for Claimant
Bill W. Richerson, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Director, Division of Workers Compensation